

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 8, 2010

Lyle W. Cayce
Clerk

No. 09-40913
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DARRELL KEITH CRITTENDEN,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 6:02-CR-21-1

Before KING, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:*

Darrell Keith Crittenden, federal prisoner # 98731-079, seeks leave to appeal in forma pauperis (IFP) from the denial of his 18 U.S.C. § 3582(c)(2) motion. He also moves for the appointment of counsel. Crittenden pleaded guilty to possession with intent to distribute 77 grams of cocaine base (crack cocaine) and was sentenced as a career offender under U.S.S.G. § 4B1.1 to 210 months of imprisonment. By moving to proceed IFP, Crittenden is challenging the district court's certification decision that his appeal was not taken in good

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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faith because it is frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Crittenden argues that he was entitled to a sentence reduction despite the fact that he was sentenced as a career offender.

Crittenden's guidelines imprisonment range was not derived from the quantity of crack cocaine involved in the offense but rather from his status as a career offender. Therefore, the district court was correct in concluding that a sentencing reduction was not permitted. *See* § 3582(c)(2); *United States v. Anderson*, 591 F.3d 789, 790-91 (5th Cir. 2009).

Crittenden has failed to show that he will raise a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his IFP motion is DENIED. Because the appeal is frivolous, it is DISMISSED. *See* 5TH CIR. R. 42.2. Crittenden's motion for the appointment of counsel is DENIED.